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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re P.B., a Person Coming Under the  
Juvenile Court Law.

B212031  
(Los Angeles County  
Super. Ct. No. CK69781)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY  
SERVICES

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Valerie Skeba, Juvenile Court Referee. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Robert E. Kalunina, Acting County Counsel, James M. Owens, Assistant County  
Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and  
Respondent.

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D.B. (father), found by the juvenile court to be the alleged father of P.B., appeals a juvenile court order terminating its jurisdiction over the underlying dependency proceeding and referring the matter to the family law court.<sup>1</sup> Father does not contest the transfer of the case to family law court, but contends the juvenile court should first have found him to be the presumed (rather than alleged) father of P.B. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 31, 2007, the Los Angeles County Department of Children and Family Services (DCFS) detained three-month-old P.B. at Miller Children’s Hospital. P.B.’s parents had taken him to the hospital because he was crying and “not moving around.” P.B. was diagnosed with an intracranial hemorrhage, collapsed lung, and bruising. His injuries were consistent with “Shaken Baby Syndrome.” Father was arrested and charged with child abuse.<sup>2</sup>

DCFS filed a section 300 petition on September 5, 2007. The arraignment hearing in the dependency case was held September 20, 2007. On the advice of his counsel in the criminal case, father refused to sign any documents relating to his paternity of P.B. The juvenile court declared father to be the alleged father of P.B. “pending his ability to claim.”

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<sup>1</sup> Father has appealed the order as a final judgment in a proceeding pursuant to Welfare and Institutions Code section 300. The order is appealable pursuant to Welfare and Institutions Code section 395. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> At the time the juvenile court terminated its jurisdiction, father was awaiting sentencing.

At the disposition hearing held on November 16, 2007, the juvenile court denied father reunification services pursuant to section 361.5, subdivision (b)(5).<sup>3</sup> At a hearing on May 16, 2008, the juvenile court returned custody of P.B. to his mother.

On November 7, 2008, the juvenile court terminated its jurisdiction and transferred the matter to family law court. Mother had requested a family law order that father not have any visitation with P.B. Father, who had taken parenting and anger management classes while incarcerated, had requested monitored visitation with P.B. upon his release from jail. The juvenile court told father it was not inclined to order monitored visitation at that time because (1) father was incarcerated due to acts he committed against P.B., (2) father had not been sentenced, and therefore did not know when he would ultimately be released, and (3) as of the hearing date, father did not have much of a relationship with the child, “at least from the child’s perspective.” The court told father that when he was released, he could “go to family law court and provide any information about what he’s been able to do while he’s incarcerated and ask the family law court to order visitation for him.”

On November 7, 2008, father filed a notice of appeal from “the order of 11-07-08 denying monitored visitation with my son upon my release from incarceration.”

### **DISCUSSION**

Although father stated on his notice of appeal that he was appealing from “the order of 11-7-08 denying monitored visitation with my son upon my release from incarceration,” father now concedes that he is not challenging the denial of visitation “at this time.” In fact, father acknowledges that “as long as he is incarcerated, visitation with an infant is a difficult proposition at best.”

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<sup>3</sup> Section 361.5, subdivision (b) provides in pertinent part: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: ¶ (5) That the child was brought within the jurisdiction of the court under subdivision (c) of Section 300 [risk of serious physical harm] because of the conduct of that parent or guardian.”

Father's only contention on appeal is that the juvenile court erred when it transferred the case to family law court without making a finding that father was the presumed father of P.B. Under Family Code section 7540, "the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage." Father contends the statutory requirements of section 7540 were apparent from the record, and entitled him to presumed father status even though he declined, on advice of counsel, to sign the applicable forms acknowledging his paternity of P.B. Father requests that we direct the juvenile court to amend its exit order to reflect father's status as a presumed father.

In juvenile law, there are four types of fathers: de facto, alleged, natural and presumed. In dependency cases, a man's status as a presumed or biological father is significant because alleged fathers have fewer rights than presumed fathers and are not entitled to custody, reunification services or visitation. (*In re Zachariah D.* (1993) 6 Cal.4th 435, 448).

As DCFS points out, however, outside of dependency and adoption proceedings, there is no "hierarchy of fathers." The juvenile court's exit order identifies father as the father of P.B. and states that father was declared to be the father of P.B. by the juvenile court. Whether or not father was found to be a presumed father in the dependency proceeding is irrelevant. Father cannot demonstrate that he has suffered prejudice because of the juvenile court's failure to make such a finding.

### **DISPOSITION**

The juvenile court's order is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.